

AO 243 (Rev. 5/85)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

AE

United States District Court		District	Northern District of Illinois
Name of Movant	TOMMY E. Jones	Prisoner No.	16318-424
		Case No.	02cr895-16
Place of Confinement	United States Penitentiary ATwater P.O. Box 019001 ATwater, California 95301		

UNITED STATES OF AMERICA

v. TOMMY E. Jones
(name under which convicted)

MOTION

- Name and location of court which entered the judgment of conviction under attack United States District Court Northern District of Illinois Eastern D.V.
- Date of judgment of conviction January 28, 2005
- Length of 300 months
- Nature of offense involved (all counts) Count 1 21:846 conspiracy to produce and distribute a controlled substance. Count 2 21:841(a) Distribute a controlled substance. 21:860 Sell, or dispose near a public housing. 18:2 Aid & Abett
- What was your plea? (Check one)

(a) Not guilty	<input checked="" type="checkbox"/>
(b) Guilty	<input type="checkbox"/>
(c) Nolo contendere	<input type="checkbox"/>

07cv6379

JUDGE PALLMEYER
MAG. JUDGE KEYS

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MICHAEL W. DOMINGUEZ
CLERK, U.S. DISTRICT COURT

If you entered a guilty plea to one count or indi

- If you pleaded not guilty, what kind of trial did you have? (Check one)

(a) Jury	<input checked="" type="checkbox"/>
(b) Judge only	<input type="checkbox"/>
- Did you testify at the trial?
Yes ☐ No ☒
- Did you appeal from the judgment of conviction?
Yes ☒ No ☐

(2)

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9. If you did appeal, answer the following:

- (a) Name of court United States Court of appeal for the Seventh circuit
- (b) Result affirmed district courts ruling of 300 months
- (c) Date of result July 18, 2006 Case No. 05-1489

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court United States Supreme Court
- (2) Nature of proceeding Petition For writ of Certiorari
06-7245 (Denied to be heard 11-27-06)
- (3) Grounds raised Interstate Agreement on Detainers
Act that was caused to be delivered "defendants
speedy trial demand. (2) whether the Seventh circuit
holding that a sentencing court may choose to sentence
a defendant under Section 841(B)(1)(A) of title 21
when conviction rest on completely different penalty 841(B)(1)(C),
- (4) Did you receive an evidentiary hearing on your petition, application or motion?
- Yes ☐ No ☒

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court N/A

(2) Name of proceeding _____

(3) Grounds raised _____

(3)

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result

N/A

(6) Date of result

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐(2) Second petition, etc. Yes ☐ No ☐

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

Defendant Counsel told him that petition
was denied and to file motion for 2255.

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
 (b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Interstate Agreement on Detainers Act
(Speedy trial violation) Marshals Form-17, Dismiss w/ prejudice

Supporting FACTS (state briefly without citing cases or law): Detainer was lodged
against defendant, and defendant demanded trial
while in state custody, government denied ever receiving
Form (Nov. Br. U.S.C.A. Nov. 30, 2005 case No 05-1489)
original Form in their brief, other arguments have been
docketed. Defendant in fact did contest court (case No. 02 cr 0895)

B. Ground two: Motion to suppress suggestive out of court
identification of defendant on May 11, 2000 and only in court
identification.

Supporting FACTS (state briefly without citing cases or law): The suggestive out of court
identification of defendant was May 02, 2000 by agent
Kenneth Papawits, the photo-log up and identification
was done by agent Lugo who was not present, and defendant
was described as FNU LNU #17, which the audio doc
not match the transcripts of the drug transaction of May 02, 2000
the U.S.C.A for the seventh circuit ruled that 9 days is relatively a short delay

C. Ground three: post-trial Motion. / Motion for acquittal

Supporting FACTS (state briefly without citing cases or law): February 13, 2004 (trial)
agent Papawits testified as defendant's adverse witness
to attendance sheet being found and defendant name didn't
appear on any of them. stipulation to witnesses testimony
and statements government made no rebuttal. post-trial
Motion was filed March 12, 2004 and government responded without
filing extension of time September 21, 2004 the day defendant was

scheduled for court, but was not present, 404(b) Evidence was not for
identity so officers should not have been allowed to testify. Double
jeopardy
Due process
violation.

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(In 886) the government said that officers testimony was not used to identify defendant, so what purpose was there testimony (double jeopardy).

- D. Ground four: Sentencing and dismissal of Indictment, of counts 1 & 2 of superseding indictment.

Supporting FACTS (state briefly without citing cases or law): The government filed a Motion to dismiss count 1 and 2 at the time of sentencing without the defendant's knowledge and defendant has been in continuous custody now for 60 months, offense ended September 2002, The district court filed an amended judgment February 13, 2006 for correction of sentence and defendant had no knowledge and the correction was done during the time the United States Court of appeals was making decision, they affirmed 800 month sentence.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☐ N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) ~~At arraignment and plea~~ _____

(b) At arraignment and plea Steven Shobet 58 West Jackson Blv. Chicago, IL 60604

(c) At trial Same as above

(d) At sentencing Same as above

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(e) On appeal Some cs above(f) In any post-conviction proceeding N/A(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Pro se Lit. Jimmy Jones
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

11-05-07
Date

Jimmy Jones
Signature of Petitioner